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Kunde Enterprises, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KUNDE ENTERPRISES, INC.,
Plaintiff,
v.
NATIONAL SURETY CORPORATION,
Defendant.

CASE NO. 4:19-cv-06636-JSW

**DECLARATION OF PAT RONEY IN
SUPPORT OF PLAINTIFF KUNDE
ENTERPRISES, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hearing Date: May 6, 2022
Time: 9:00 a.m.
Courtroom: 5

Pre-Trial Conference Date: March 14, 2022
Trial Date: May 16, 2022

1 I, Pat Roney, declare as follows:

2 1. I am CEO and Founding Partner of Plaintiff Kunde Enterprises, Inc. (“Kunde”).
 3 The below Declaration is based on my personal knowledge or on information I have received in
 4 my capacity as CEO of Kunde, which I believe to be true; and if called upon, I could and would
 5 testify competently thereto. Pursuant to Local Rule 7-5, I submit this declaration in support of
 6 Kunde’s Motion for Partial Summary Judgment in the above-captioned matter.

7 2. A true and correct copy of the “all risks” insurance policy (Policy No. S95-MZX-
 8 80977326, issued April 1, 2017 – herein, the “Policy”) that Kunde purchased from Defendant
 9 National Surety Corporation (“National Surety”) is attached as **Exhibit 1** to the Joint Appendix
 10 of Exhibits for the Parties’ Cross-Motions for Summary Judgment (the “Joint Appendix”) filed
 11 concurrently herewith.

12 3. In October 2017, a series of wildfires raged across Northern California, including
 13 in Napa and Sonoma Counties, encompassing the area that includes Kunde’s property located at
 14 9825 Sonoma Hwy, Kenwood, CA 95452. For companies like Kunde that own wineries and
 15 conduct winemaking activities in the affected areas, the resulting smoke wreaked havoc on the
 16 lifeblood of their businesses. Throughout this time, smoke infiltrated Kunde’s winemaking
 17 facilities and exposed the vats, machinery, and wine products at various stages of handling and
 18 processing. Consequently, the wine made during this time had a perceptible “smoke taint,”
 19 rendering them unmarketable except for salvage value.

20 4. In total, Kunde suffered \$6,047,853.38 for damaged wine lots, excluding interest.
 21 The loss calculation takes into consideration both saved costs and the money Kunde received in
 22 salvage, thus reflecting the profit Kunde would have earned but for the Wildfires. A true and
 23 correct copy of a Loss Valuation showing Kunde’s loss calculations is attached as **Exhibit 3** to
 24 the Joint Appendix (for ease of reference, Exhibit 3 includes only tables and information relevant
 25 to loss claimed by Kunde in this lawsuit, with highlighting on the summary page to indicate the
 26 wine loss amounts). The Parties have filed a motion requesting to file Exhibit 3 under seal.

27 5. Kunde promptly tendered its losses for coverage under the Policy. At that time,
 28 the Wildfires were not fully contained and Kunde feared that many of the unharvested grapes

1 would be lost. However, after the ETS testing confirmed that grapes were not smoke tainted,
 2 Kunde was able to harvest many of the grapes. Unfortunately, the finished wines, made from the
 3 grapes harvested before and during the Wildfires that were processed as smoke continued to
 4 impact Kunde's facilities, exhibited smoke taint damage. Kunde supplemented its claim
 5 accordingly.

6 6. Because no one disputed that the wines had been damaged, Kunde expected that
 7 National Surety would promptly acknowledge its coverage obligations. But National Surety did
 8 not live up to its end of the bargain.

9 7. On October 9, 2018, National Surety denied coverage for Kunde's claim. A true
 10 and correct copy of National Surety's October 9, 2018 letter is attached as **Exhibit 4** to the Joint
 11 Appendix.

12 8. A true and correct copy of the October 22, 2018 letter from Greg Skorheim,
 13 Kunde's claim administrator, to National Surety is attached as **Exhibit 5** to the Joint Appendix.

14 9. A true and correct copy of a report that National Surety provided to Kunde, by
 15 Philip Crews, PhD, dated March 6, 2019, is attached as **Exhibit 2** to the Joint Exhibit.

16 10. A true and correct copy of National Surety's March 14, 2019 letter responding to
 17 Mr. Skorheim is attached as **Exhibit 6** to the Joint Appendix.

18 11. A true and correct copy of the August 22, 2019 letter from Kunde's counsel,
 19 Latham & Watkins, to National Surety is attached as **Exhibit 7** to the Joint Appendix.

20 12. A true and correct copy of National Surety's September 12, 2019 letter
 21 responding to Latham & Watkins is attached as **Exhibit 8** to the Joint Appendix.

22 13. National Surety has paid Kunde \$1 million toward Kunde's claim for smoke taint
 23 loss, which the parties agreed would not operate as an accord and satisfaction of, settlement of,
 24 or waiver of Kunde's claims and positions (or any portion thereof). This \$1 million payment is
 25 the only payment National Surety has made toward Kunde's claim for smoke taint loss.

26 [SIGNATURE ON FOLLOWING PAGE]
 27

28 I declare under penalty of perjury that the foregoing is true and correct. Executed in Santa

1 Rosa, California on February 18, 2022.

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/s/ 

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Pat Roney

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